

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

October 28, 2004

IN RE:

PETITION OF TENNESSEE AMERICAN  
WATER COMPANY TO CHANGE AND  
INCREASE CERTAIN RATES AND  
CHARGES SO AS TO PERMIT IT TO  
EARN A FAIR AND ADEQUATE RATE  
OF RETURN ON ITS PROPERTY USED  
AND USEFUL IN FURNISHING WATER  
SERVICE TO ITS CUSTOMERS

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DOCKET NO.  
04-00288

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ORDER GRANTING PETITIONS FOR INTERVENTION  
AND MODIFYING PROCEDURAL SCHEDULE

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This matter came before the Hearing Officer upon the *Petition to Intervene by the Chattanooga Manufacturers Association* filed on October 25, 2004 by the Chattanooga Manufacturers Association ("CMA") and the *Petition to Intervene* filed by the City of Chattanooga on October 26, 2004 and upon the request of Tennessee American Water Company ("TAWC") to modify the Procedural Schedule issued on October 11, 2004.

**BACKGROUND**

On September 10, 2004, TAWC filed a petition to change and increase certain rates and charges so as to permit it to earn a fair and adequate rate of return on its property used and useful in furnishing water service to its customers ("*Petition*"). During a regularly scheduled Authority Conference held on September 27, 2004, Chairman Pat Miller, Director Deborah Taylor Tate and Director Sara Kyle, the voting panel assigned to this Docket, unanimously voted to appoint the

General Counsel or his designee to act as Hearing Officer in this proceeding for the purpose of hearing preliminary matters and setting a procedural schedule to completion.

On October 1, 2004, the Consumer Advocate Division of the Office of the Attorney General ("Consumer Advocate") filed a *Petition to Intervene* in this proceeding. On October 11, the Hearing Officer granted the *Petition to Intervene* and established a Procedural Schedule in this Docket.<sup>1</sup>

### INTERVENTION

On October 25, 2004, CMA filed its *Petition to Intervene by the Chattanooga Manufacturers Association*. On October 26, 2004, the City of Chattanooga filed its *Petition to Intervene*. At a Status Conference held on October 26, 2004, no party opposed the petitions for intervention.

Tenn. Code Ann. § 4-5-310(a) sets forth the following criteria for granting petitions to intervene:

(a) The administrative judge or hearing officer shall grant one (1) or more petitions for intervention if;

(1) The petition is submitted in writing to the administrative judge or hearing officer, with copies mailed to all parties named in the notice of the hearing, at least seven (7) days before the hearing;

(2) The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities or other legal interest may be determined in the proceeding or that the petitioner qualifies as an intervenor under any provision of the law; and

(3) The administrative judge or hearing officer determines that the interests of justice and the orderly and prompt conduct of the proceedings shall not be impaired by allowing the intervention.

In its petition, CMA asserts that the increases in certain rates and charges requested in TAWC's *Petition* include increases that will adversely affect ratepayers that are members of

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<sup>1</sup> See Order Granting Petition For Intervention And Establishing Procedural Schedule (October 11, 2004)

CMA. CMA further asserts that no other party in this Docket will adequately represent the rights and interests of its members.

The Hearing Officer finds that the legal rights and interests of CMA's members may be determined in this proceeding, CMA's petition is timely and its intervention will not impair the orderly and prompt conduct of these proceedings. For these reasons, and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants the *Petition to Intervene by the Chattanooga Manufacturers Association*.

The City of Chattanooga asserts in its petition that, in addition to being a major customer of TAWC, in its governmental capacity it seeks to protect the legal rights, duties, privileges, immunities or other legal interests of its citizens that may be determined in these proceedings.

The Hearing Officer finds that the legal rights and interests of the City of Chattanooga may be determined in this proceeding, the City's petition is timely and its intervention will not impair the orderly and prompt conduct of these proceedings. For these reasons, and applying the standards set forth in Tenn. Code Ann. § 4-5-310(a), the Hearing Officer grants the City of Chattanooga's *Petition to Intervene*.

#### **PROCEDURAL SCHEDULE**

On October 11, 2004, the Hearing Officer established the following schedule in this Docket:

Status Conference	Tuesday, October 26, 2004 at 10:00 a.m.
All Discovery Requests Served	Monday, November 15, 2004
Responses and Objections to Discovery Filed	Wednesday, December 1, 2004
Status Conference on Discovery Issues (if needed)	Tuesday, December 14, 2004 at 10.00 a.m.

Supplemental Responses to Discovery Due (if needed)	Tuesday, December 21, 2004
Direct Testimony Due	Tuesday, January 11, 2005
Rebuttal Testimony Due	Tuesday, January 18, 2005
Pre-Hearing Conference	Friday, January 21, 2005 at 10:00 a.m.
Hearing	Monday, January 31, 2005 at 10.00 a.m. through Thursday, February 3, 2005

At the Status Conference held on October 26, 2004, the Hearing Officer gave the parties the opportunity to request modifications to the above Procedural Schedule. TAWC requested that the deadline for the filing of direct testimony of the intervenors be moved to a date in mid-December and that a second round of discovery be permitted before rebuttal testimony is filed. The Consumer Advocate did not object generally to the second round of discovery, but objected to the shorter timeframe in which to prepare its direct testimony. The parties were unable to reach an agreement on a revised procedural schedule, and the Hearing Officer took the matter under advisement.

The Hearing Officer finds that the request of TAWC for a second round of discovery is well-taken, but finds that a shorter-time frame for the second round is appropriate because TAWC is not precluded from participating in the first round of discovery. Therefore, based upon the arguments of the parties and taking into consideration the interests and needs of each, the Hearing Officer modifies the Procedural Schedule as follows:

<b>Proposed Modifications to Protective Order</b>	<b>Friday, October 29, 2004</b>
<b>Discovery Requests Served</b>	<b>Monday, November 15, 2004</b>
<b>Responses and Objections to Discovery Filed</b>	<b>Wednesday, December 1, 2004</b>

<b>Status Conference on Discovery Issues (if needed)</b>	<b>Monday, December 6, 2004 at 10:00 a.m.</b>
<b>Supplemental Responses to Discovery Due (if needed)</b>	<b>Friday, December 10, 2004 at 4:00 p.m.</b>
<b>Direct Testimony Due</b>	<b>Thursday, December 23, 2004</b>
<b>Discovery Requests Served</b>	<b>Wednesday, January 5, 2005</b>
<b>Responses and Objections to Discovery Filed</b>	<b>Tuesday, January 11, 2005</b>
<b>Status Conference on Discovery Issues (if needed)</b>	<b>Friday, January 14, 2005 at 10:00 a.m.</b>
<b>Rebuttal Testimony Due</b>	<b>Tuesday, January 18, 2005</b>
<b>Pre-Hearing Conference</b>	<b>Friday, January 21, 2005 at 10:00 a.m.</b>
<b>Hearing</b>	<b>Monday, January 31, 2005 at 10:00 a.m. through Thursday, February 3, 2005</b>

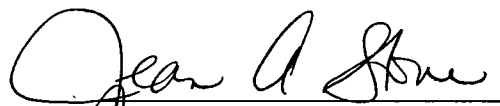
All filings are due **no later than 2:00 p.m.** on the dates indicated unless otherwise specified.

**IT IS THEREFORE ORDERED THAT:**

1. The *Petition to Intervene by the Chattanooga Manufacturers Association* filed by CMA on October 25, 2004 is granted. The Chattanooga Manufacturers Association may participate in this proceeding as its interests require and receive copies of any notices, orders or other documents filed herein.

2. The *Petition to Intervene* filed by the City of Chattanooga on October 26, 2004 is granted. The City of Chattanooga may participate in this proceeding as its interests require and receive copies of any notices, orders or other documents filed herein.

3. The Procedural Schedule is modified as set forth herein.

  
Jean A. Stone, Hearing Officer